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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/526,845	04/27/2007	Minchu Sonnenschein	0-05-037	9356
42009 7590 05/12/2009 KEVIN D. MCCARTHY ROACH BROWN MCCARTHY & GRUBER, P.C. 424 MAIN STREET 1920 LIBERTY BUILDING BUFFALO, NY 14202				
EXAMINER				
LOW, LINDSAY M				
ART UNIT		PAPER NUMBER		
3721				
MAIL DATE		DELIVERY MODE		
05/12/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/526,845

**Applicant(s)**

SONNENSCHIN ET AL.

**Examiner**

LINDSAY M. LOW

**Art Unit**

3721

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 2, 6, 7, 9 and 10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 6, 7, 9 and 10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

### DETAILED ACTION

1. This action is in response to applicant's amendment received on November 10th, 2008.

#### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-2, 6-7, and 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable *Sonnenschein* (2001/0056282) in view of *Jankowski* (2004/0004105) for the same reasons set forth in paragraph 8 of the previous office action mailed August 27th, 2008.

Regarding the amendments to claim 1, *Sonnenschien's* staple cartridge has one or more arrays as shown in Fig. 20A. In addition, the cartridge has a facing surface having an area with slots 141 for the staples to be fired and two bores 142 associated with each array. The anvil (see Fig. 18B and 18C) has two locking screws 121 and a facing surface (in the vicinity of holes 116) for the locking screws 121 to be extended. The cartridge is located at the proximal end of the articulation section. The bottom surfaces of bores 142 are deemed to be a second level in the facing surface of the cartridge and these two levels assist in correcting longitudinal misalignment (by locking the anvil and cartridge in place via screws 121).

Regarding the amendment to claim 6, the step structure shown in Fig. 43A is used to verify the parts of the stapling device being in a correct working relationship (see paragraphs 0329-0331).

Sonnenschien's modified anvil and cartridge facing surfaces have matching curvatures (taught by Jankowski as shown in Fig. 4A and 4B). Regarding the amendment to claim 7, the anvil is a section of a right circular cylinder cut by a plane parallel to its axis as shown in Jankowski's figures.

#### ***Response to Arguments***

4. Applicant's arguments filed November 10<sup>th</sup>, 2008 have been fully considered but they are not persuasive.

Applicant contends that Jankowski only discloses curvature that aids alignment in one direction only. However, as applicant stated in the arguments, Jankowski discusses enhancing alignment in the longitudinal and transverse directions. Note that due to the curvature shown in Figs. 4A and 4B of Jankowski, the anvil and the cartridge are aligned in both directions when they are brought into contact with one another. They are aligned longitudinally, as they are aligned along the same longitudinal axis. They are also aligned transversely, as one of the anvil or cartridge cannot move transversely relative to the other. In addition, note that Sonnenschien's locking screws and corresponding bores (with a second level being the bottom surfaces of the bores) aid in correcting misalignment. Therefore, Sonnenschien's modified device is deemed to correct both longitudinal and transverse misalignment.

Applicant contends that a person skilled in the art would not look to a circular row of staples to combine with Sonnenschien because Sonnenschien's device is used for the therapy of GERD. However, it should be noted that Jankowski's stapling device is in the same field of endeavor as Sonnenschien, as both devices aid in surgical stapling of tissue in a patient. Jankowski clearly teaches the advantage of having corresponding curved surfaces on an anvil and cartridge of a surgical stapler to aid in alignment during operation of the device. Examiner asserts that a person skilled in the art would look within the same field of endeavor for surgical devices, especially staplers, which teach enhanced alignment. Note that Sonnenschien discusses throughout the disclosure the advantages of proper alignment between the anvil and cartridge.

Applicant contends that the lower surfaces of the bores are not intended or capable of being equivalent of a lower surface of a cartridge in order to create a two level structure. However, it should be noted that claims are given their broadest reasonable interpretation consistent with the specification. In this instance, the claims state that the center of curvature having the staple slots "is lowered relative to the center of curvature of the rest of said facing structure, resulting in a surface having two levels, said two levels assisting in correcting longitudinal misalignment." Note that the bottom surfaces of the bores are another level in the surface of the cartridge. The bores are located in the center of the cartridge where the staple slots are located. The bottom surfaces of the bores aid in correcting misalignment due to the engagement with the locking screws 121. Therefore, Sonnenschien is deemed to anticipate the staple cartridge having two surface levels.

For the reasons above, the grounds of rejection are deemed proper.

***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
6. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **LINDSAY M. LOW** whose telephone number is (571)272-1196. The examiner can normally be reached on Monday thru Friday 7:30 to 5:00.
8. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. M. L./  
Examiner, Art Unit 3721

/Rinaldi I Rada/  
Supervisory Patent Examiner, Art Unit 3721

5/11/2009